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DEPARTMENT OF COMMERCE

International Trade Administration

A-201-845

Antidumping Suspension Agreement on Sugar from Mexico: Rescission of 2014-2015 and 2015-2016 Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY:

On May 1, 2017, the Department notified the producers/exporters that were signatories to the Agreement Suspending the Antidumping Duty Investigation on sugar from Mexico (the AD Agreement) of its intent to terminate the AD Agreement unless a new agreement was reached on or before June 5, 2017. The Department subsequently modified its notice of intent to terminate the AD Agreement, stating its continued intent to terminate the AD Agreement unless an amended agreement was reached on or before June 6, 2017. Because the Department intends to terminate the AD Agreement, or, in the alternative, amend the AD Agreement prior to the expiration of the termination period, the two ongoing administrative reviews of the original AD Agreement are now moot, and the Department is rescinding both administrative reviews.

DATES: Effective June 5, 2017.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-0162 or (202) 482-0408.

SUPPLEMENTAL INFORMATION:

Background

Investigation and Issuance of the AD Agreement

On April 17, 2014, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930, as amended (the Act), to determine whether imports of sugar from Mexico are being, or are likely to be, sold in the United States at less than fair value.¹ On October 24, 2014, the Department preliminarily determined that sugar from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Act.²

On December 19, 2014, the Department and representatives of the signatory producers/exporters accounting for substantially all imports of sugar from Mexico signed the AD Agreement, under section 734(c) of the Act, which suspended the AD investigation.³ The basis for this action was an agreement between the Department and signatory producers/exporters accounting for substantially all imports of sugar from Mexico, wherein each signatory producer/exporter agreed to revise its prices to eliminate completely the injurious effects of exports of the subject merchandise to the United States.

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified the Department that they had petitioned the International Trade

¹ See *Sugar from Mexico: Initiation of Antidumping Duty Investigation*, 79 FR 22795 (April 24, 2014).

² See *Sugar from Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 65189 (November 3, 2014).

³ See *Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico*, 79 FR 78039 (December 29, 2014) (AD Agreement).

Commission (ITC) to conduct a review of the AD Agreement under section 734(h) of the Act, to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the AD Agreement. On March 19, 2015, in a unanimous vote, the ITC found that the AD Agreement eliminated completely the injurious effects of imports of sugar from Mexico.⁴ As a result of the ITC's determination, the AD Agreement remained in effect, and on March 27, 2015, the Department, in accordance with section 734(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and refund all cash deposits.

Notwithstanding issuance of the AD Agreement, pursuant to requests by domestic interested parties, the Department continued its investigation and made an affirmative final determination of sales at less than fair value.⁵ In its *Final Determination*, the Department calculated weighted-average dumping margins of 40.48 percent for Fondo de Empresas Expropiadas del Sector Azucarero (FEESA), 42.14 percent for Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group), and 40.74 percent for all other Mexican producers/exporters. The Department stated, in its *Final Determination*, that it would “not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the AD Suspension Agreement is terminated and the Department issues an antidumping duty order,” and, in that case, it would “instruct CBP to suspend liquidation and require a cash deposit equal to the weighted-average amount by which

⁴ See *Sugar from Mexico; Determinations*, 80 FR 16426 (March 27, 2015).

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015); *Sugar From Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015) (*Final Determination*).

normal value exceeds U.S. price,” and adjusted for export subsidies.⁶ The ITC subsequently made an affirmative determination of material injury to an industry in the United States by reason of imports of sugar from Mexico.⁷

Reviews

On February 9, 2016, at the request of the American Sugar Coalition and its Members (ASC),⁸ Imperial, and AmCane, the Department initiated an administrative review of the AD Agreement for the period of review from December 19, 2014 through November 30, 2015⁹ to examine, the status of, and compliance with, the AD Agreement,¹⁰ as well as whether suspension of the investigation is in the “public interest,” including the availability of supplies of sugar in the U.S. market, and whether “effective monitoring” is practicable.¹¹ On December 5, 2016, the Department published the preliminary results of its administrative review of the AD Agreement.¹² In its *Preliminary Results*, the Department determined that there is some indication that certain individual transactions of subject merchandise may not be in compliance with the terms of the AD Agreement, and further, that the AD Agreement may no longer be meeting all of the statutory requirements, as set forth in sections 734(c) and (d) of the Act.

⁶ *Final Determination*, 80 FR at 57342.

⁷ *See Sugar From Mexico*, 80 FR 70833 (November 16, 2015) (*Final ITC Determination*).

⁸ The members of the American Sugar Coalition are: American Sugar Cane League, American Sugarbeet Growers Association, American Sugar Refining, Inc., Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and the United States Beet Sugar Association.

⁹ *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 6832 (February 9, 2016) (2014-2015 Administrative Review).

¹⁰ *See* section 751(a)(1)(C) of the Act.

¹¹ *See* section V of the AD Agreement.

¹² *See Antidumping Duty Suspension Agreement on Sugar From Mexico; Administrative Review*, 81 FR 87541 (December 5, 2016) (*Preliminary Results*).

On February 13, 2017, at the request of interested parties ASC, Imperial, and Zucarmex S.A. de C.V. (Zucarmex), the Department initiated an administrative review of the AD Agreement for the period December 1, 2015 through November 30, 2016.¹³

On May 1, 2017, the Department notified the signatory producers/exporters of its intent to terminate the AD Agreement, pursuant to Section X.B of the AD Agreement, unless the parties reached agreement upon resolution of the outstanding issues with the current agreement on or before June 5, 2017.¹⁴ On June 5, 2017, the Department notified the signatory producers/exporters that it was extending the period within which to reach an agreement until June 6, 2017.¹⁵

Scope of AD Agreement

The product subject to the AD Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The covered merchandise is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000.

See Appendix I for the full description of merchandise covered by the AD Agreement.

Period of Administrative Reviews

¹³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017) (2015-2016 Administrative Review).

¹⁴ See Letter from Ronald Lorentzen to Juan Cortina Gallardo et al., “Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico” (May 1, 2017) (May 1, 2017 notice).

¹⁵ See Letter from Ronald Lorentzen to Juan Cortina Gallardo et al., “Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico” (June 5, 2017) (June 5, 2017 notice).

The POR of the first administrative review is December 19, 2014 through November 30, 2015 and the POR of the second administrative review is December 1, 2015 through November 30, 2016.

Rescission of Administrative Reviews

The Department has indicated its intent to terminate the AD Agreement, unless an amended agreement can be reached.¹⁶ Accordingly, the questions of the status of, and compliance, with the AD Agreement, whether suspension of the AD Agreement is in the “public interest,” including the availability of supplies of sugar in the U.S. market, and whether “effective monitoring” is practicable have been rendered moot because either the AD Agreement will be amended and suspension of the investigation will be continued with the Department’s issuance of a final amendment to the AD Agreement, or the AD Agreement will be terminated, according to the Department’s May 1, 2017, notice of intent to terminate, as modified by its June 5, 2017 letter.¹⁷ Therefore, the Department is rescinding the 2014-2015 and 2015-2016 administrative reviews of the AD Agreement.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

¹⁶ See May 1, 2017 letter, as modified by the June 5, 2017 letter.

¹⁷ *Id.*

We are issuing and publishing this notice in accordance with sections 734(f), 751(a)(1) and 777(i)(1) of the Act.

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Dated: June 6, 2017

Appendix I: Scope of the AD Agreement

The product covered by the AD Agreement is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}O_{11}$; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of the order.

The scope of the order does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;¹⁸ (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (*e.g.*, cereals). Specialty sugars excluded from the scope of the order are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by the AD Agreement is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, and 1702.90.4000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

¹⁸ This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

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